

No. 20 New Zealand - Trade in Services

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE  
CANBERRA

Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations -  
Trade Agreement

(Canberra, 18 August 1988)

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第20号 新西兰 - 服务贸易

外交与贸易部堪培拉

服务贸易议定书关于澳大利亚新西兰更紧密经济关系贸易协定

(堪培拉, 1988年8月18日)

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PROTOCOL ON TRADE IN SERVICES TO THE AUSTRALIA NEW ZEALAND CLOSER ECONOMIC RELATIONS - TRADE AGREEMENT

AUSTRALIA AND NEW ZEALAND (called "the Member States"),

CONSCIOUS of their longstanding friendship and close historic, political, economic and geographic relationship;

RECOGNISING the development of a closer economic relationship since the commencement of the Australia New Zealand Closer Economic Relations - Trade Agreement, done in Canberra on 28 March 1983<sup>1</sup> (called "the Agreement") and the benefits of free trade in goods;

AWARE that this relationship will be strengthened and enhanced by expanding trade in services between the two countries through a widening of the Agreement;

MINDFUL that expanded and liberalised trade in services will assist the expansion of trade in goods;

BELIEVING in the advantages of a clearly established and secure liberal trading framework for trade in services to govern exchange of services and provide confidence to their industries to take investment and planning decisions;

DESIROUS of improving the efficiency and competitiveness of their service industry sector;

RECOGNISING their commitment to securing trade liberalisation and an outward looking approach to trade;

BELIEVING that a framework of rules for trade in services will lead to a more effective use of resources and an increased capacity to contribute to economic development through international exchanges and the promotion of closer links with other countries;

CONSCIOUS of their rights and obligations under the General Agreement on Tariffs and Trade<sup>2</sup> and other multilateral and bilateral agreements and arrangements;

DESIRING to conclude a Protocol to the Agreement to provide for the widening of the closer economic relationship to cover trade in services;

HAVE AGREED as follows:

Article 1

Objectives

The objectives of the Member States in concluding this Protocol to the Agreement are:

- (a) to strengthen the relationship between Australia and New Zealand;
- (b) to liberalise barriers to trade in services between the Member States;
- (c) to improve the efficiency and competitiveness of their service industry sectors and expand trade in services between the Member States;

服务贸易议定书关于澳大利亚新西兰更紧密经济关系贸易协定

澳大利亚和新西兰（称为“成员国”），

意识到双方长期友谊和紧密的历史、政治、经济和地理关系；

认识到自澳大利亚新西兰更紧密经济关系贸易协定（在堪培拉于1983<sup>1</sup> 签署，称为“该协定”）生效以来，双方经济关系的发展以及货物自由贸易的利益；

意识到这一关系将通过扩大协定中的服务贸易而得到加强和提升；

注意到扩大和自由化的服务贸易将有助于货物贸易的扩展；

相信为服务贸易建立明确且安全的自由贸易框架，将有助于规范服务交换并为双方产业提供信心，以做出投资和规划决策；

渴望提高其服务业部门的生产力和竞争力；

认识到他们致力于实现贸易自由化和对外贸易的开放性方针；

相信服务贸易规则框架将促进资源的更有效利用，并通过国际交流与加强与其他国家的联系，提高对经济发展的贡献能力；

意识到他们在关税及贸易总协定<sup>2</sup> 以及其他多边和双边协议和安排下的权利和义务；

希望缔结一项协定义定书，以扩大更紧密经济关系，涵盖服务贸易；

达成如下协议：

文章 1

目标

The 成员国缔结本协议议定书的目标是：

- (a) 加强澳大利亚和新西兰之间的关系；
- (b) 自由化成员国之间服务贸易的壁垒；(c) 提高其服务业部门的生产效率和竞争力

扩大成员国之间的服务贸易；

(d) to establish a framework of transparent rules to govern trade in services between the Member States;

(e) to facilitate competition in trade in services.

Article 2

Scope of Protocol

1. This Protocol shall apply to the provision of services in the Free Trade Area referred to in Article 2 of the Agreement.

2. The provisions of this Protocol shall apply subject to the foreign investment policies of the Member States.

3. This Protocol shall apply to any measure, in existence or proposed, of a Member State that relates to or affects the provision of a service by or on behalf of a person of the other Member State within or into the territory of the first Member State.

4. Except as otherwise provided in particular Articles, this Protocol shall not apply to the provision within or into the territory of one Member State of the services inscribed by that Member State in the Annex until such time as such services inscribed by it have been removed from the Annex in accordance with Article 10 of this Protocol.

Article 3

Definitions

Provision of services includes:

(a) the production, distribution, marketing, sale and delivery of a service; and

(b) for the purpose of the activities referred to in the previous sub-paragraph of this paragraph:

(d) 建立一套透明的规则框架，以规范成员国之间的服务贸易；

(e) 促进服务贸易中的竞争。

文章 2

议定书范围

1. 本议定书应适用于该协定第 2 条所述自由贸易区内服务的提供。

2. 本议定书的条款应受成员国外国投资政策的约束。

3. 本议定书应适用于任何现存或拟议的成员国措施，该措施与或影响另一成员国个人在第一成员国领土内或向该领土提供服务的提供。

4. 除特别规定的文章另有规定外，本议定书不适用于一个成员国在其领土内或向其领土提供的服务，除非该成员国已根据本议定书第10条将其已列入附件的服务从附件中移除。

文章 3

定义

服务提供包括：

(a) 服务生产、分销、营销、销售和交付；以及 (b) 为了本段前一个分句所述的活动：

- (i) access to and use of domestic distribution systems; and
- (ii) rights of establishment.

Measure includes any law, regulation, or administrative practice.

Person of a Member State means:

- (a) a natural person who is a citizen of, or ordinarily resident in, that State;
- (b) a body corporate established under the law of that State;
- (c) an association comprising or controlled by:
  - (i) persons described in one or both of sub-paragraphs (a) or (b); or
  - (ii) persons described in one or both of sub-paragraphs (a) or (b) and persons so described in relation to the other Member State.

Article 4

Market access

Each Member State shall grant to persons of the other Member State and services provided by them access rights in its market no less favourable than those allowed to its own persons and services provided by them.

Article 5

National treatment

- Each Member State shall accord to persons of the other Member State and services provided by them treatment no less favourable than that accorded in like circumstances to its persons and services provided by them.
- Notwithstanding paragraph 1 of this Article, the treatment a Member State accords to persons of the other Member State may be different from the treatment the Member State accords to its persons, provided that:
  - (a) the difference in treatment is no greater than that necessary for prudential, fiduciary, health and safety or consumer protection reasons; and
  - (b) such different treatment is equivalent in effect to the treatment accorded by the Member State to its ordinary residents for such reasons.
- The Member State proposing or according different treatment under paragraph 2 of this Article shall have the burden of establishing that such treatment is consistent with that paragraph.
- No provision of this Article shall be construed as imposing obligations or conferring rights upon either Member State with respect to Government procurement or subsidies.

Article 6

Most favoured nation treatment

- (i) 国内分销系统访问和使用； 以及
- (ii) 设立权。

措施包括任何法律、法规或行政惯例。

成员国人员是指：

(a) 该国的公民或通常居住在该国的自然人； (b) 根据该国的法律设立的法人； (c) 由下列人员组成的或受其控制的协会： (i) 在子句(a)或(b)中描述的一名或两名人员； 或(ii) 在子句(a)或(b)中描述的一名或两名人员以及与另一成员国具有此类描述的人员。

第4条

市场准入

每个成员国应当给予其他成员国的个人及其提供的服务进入其市场的权利， 其待遇不得低于其本国个人及其提供的服务所享有的待遇。

第5条

国民待遇

- 每个成员国应当给予其他成员国的个人及其提供的服务不低于在类似情况下给予其本国个人及其提供的服务的那种待遇。
- 尽管有本条第1款的规定， 一个成员国给予其他成员国的个人以的待遇可能与该成员国给予其本国个人的待遇不同， 但条件是：
  - (a) 待遇的差异不超过为审慎、 受信、 健康和安全或消费者保护理由所必需的程度； 和
  - (b) 这种不同的待遇在效果上等同于成员国给予其普通居民就此类原因所给予的待遇。
- 提出或给予本条第2款所述不同待遇的成员国应当证明此类待遇与本款一致。
- 本条任何规定均不得解释为对任何成员国就政府采购或补贴施加义务或赋予权利。

文章 6

最惠国待遇

In relation to the provision of services inscribed by it in the Annex, each Member State shall accord to persons of the other Member State and services provided by them treatment no less favourable than that accorded in like circumstances to persons of third States.

Article 7

Commercial presence

Each Member State shall accord to persons of the other Member State the right to select their preferred form of commercial presence, which shall be in accordance with the applicable laws and regulations of that Member State.

Article 8

Discriminatory or restrictive measures

Notwithstanding that such measures may be consistent with Articles 4, 5, 6 and 7 of this Protocol, neither Member State shall introduce any measure, including a measure requiring the establishment or commercial presence by a person of the other Member State in its territory as a condition for the provision of a service, that constitutes a means of arbitrary or unjustifiable discrimination against persons of the other Member State or a disguised restriction on trade between them in services.

Article 9

Licensing and certification

- Each Member State shall endeavour to ensure that licensing and certification measures shall not have the purpose or effect of impairing or restraining, in a discriminatory manner, access of persons of the other Member State to such licensing or certification.
- Each Member State shall encourage the recognition of the qualifications obtained in the other Member State, for the purpose of licensing and certification requirements for the provision of services.

Article 10

Liberalisation of trade

- The Member States agree to review in accordance with Article 20 of this Protocol the status of services inscribed in the Annex with a view to the liberalisation of trade in such services and whether, and if so how, removal from the Annex could be achieved.
- A Member State may, at any time, either upon request of the other Member State or unilaterally, remove in whole or in part services inscribed by it from the Annex by notifying the other Member State in writing of its intention to do so.

Article 11

Export subsidies and other direct government assistance

The Member States shall not introduce new, or expand existing, export subsidies, export incentives and other assistance measures having a direct distorting effect on trade between them in services and shall work towards the elimination of any such measures by 30 June 1990.

Article 12

Monopolies

关于附件中列出的服务提供，每个成员国应给予其他成员国的个人及其提供的服务不低于在类似情况下给予第三国个人的待遇。

文章 7

商业存在

每个成员国应当给予其他成员国的个人选择其偏好的商业存在形式的权利，该形式应当符合该成员国的适用法律和法规。

文章 8

歧视性或限制性措施

尽管此类措施可能与本议定书的第 4、5、6 和 7 条一致，但任何成员国均不得采取任何措施，包括要求其他成员国的个人在其领土内设立或以商业存在作为提供服务条件的措施，该措施构成对其他成员国个人的任意或不合理的歧视，或对它们之间服务贸易的变相限制。

文章 9

许可和认证

- 每个成员国应努力确保许可和认证措施不得具有损害或限制其他国家个人进入此类许可或认证的歧视性目的或效果。
- 每个成员国应鼓励承认在其他成员国获得的服务提供的许可和认证要求方面的资格。

文章 10

贸易自由化

- 成员国同意根据本议定书第20条审查附件中列出的服务状况，以实现此类服务的贸易自由化，并确定是否以及如何可以从附件中删除这些服务。
- 任何成员国可以在任何时候，应另一成员国的请求或单方面地，通过书面通知另一成员国其意图，将其列出的服务全部或部分从附件中删除。

第11条

出口补贴和其他直接政府援助

成员国不得引入新的或扩大现有的出口补贴、出口激励以及其他具有直接扭曲贸易效应的措施，并应努力在1990年6月30日前消除任何此类措施。

文章 12

垄断

1. Where a Member State maintains a monopoly for the provision of a service inscribed by it in the Annex, the services of such monopoly shall be made available to persons of the other Member State for normal business activities in respect of price, quality and quantity under transparent and non-discriminatory conditions.

2. Member States shall endeavour to prevent monopoly service providers under their direct control from using revenues deriving from their monopoly activities for the purpose of subsidising services they may provide in competition with persons of the Member States.

Article 13  
Transparency

1. Each Member State shall make public promptly all laws, regulations, judicial decisions and administrative rulings pertaining to trade in services.

2. Each Member State shall, to the extent possible, provide maximum possible opportunity for comment by interested parties on proposed laws, regulations, procedures and administrative rulings affecting trade in services.

3. The provisions of paragraphs 1 and 2 of this Article are to be interpreted as widely as possible consistent with not requiring a Member State to disclose confidential information contrary to national security, the public interest or prejudice legitimate commercial interests.

Article 14  
Denial of benefits

Subject to prior notification and consultation in accordance with Articles 16 and 19 of this Protocol, a Member State may deny the benefits of this Protocol to persons of the other Member State providing a service if the Member State establishes that the service is indirectly provided by a person, not being a person of either Member State.

Article 15  
Taxation

The provisions of this Protocol shall not apply to any taxation measure.

Article 16  
Notification

1. A Member State shall provide written notice to the other of any proposed or actual measure that it considers might materially affect the operation of this Protocol. The notice shall include the reasons for the measure.

2. The written notice shall be given as far in advance as possible of implementation of the measure. If prior notice is not possible, the Member State implementing the measure shall provide written notice to the other Member State as soon as possible after implementation.

3. Upon request of the other Member State, information and response to questions pertaining to any actual or proposed measure, whether or not previously notified, shall be promptly provided.

1. 当一个成员国对其在附件中列出的服务维持垄断时，该垄断服务应以透明和非歧视的条件，向其他成员国的个人提供，用于正常商业活动，包括价格、质量和数量方面。

2. 成员国应努力防止其直接控制的垄断服务提供者利用其垄断活动产生的收入，为补贴可能与成员国个人竞争的服务。

第13条  
透明度

1. 每个成员国应迅速公布所有与服务贸易有关的法律、法规、司法判决和行政裁决。

2. 每个成员国应尽可能为利益相关方提供最大机会，对拟议的法律、法规、程序和行政裁决提出意见，这些法律、法规、程序和行政裁决影响服务贸易。

3. 本条第1款和第2款的规定的解释应尽可能广泛，但不应要求成员国披露与国家安全、公共利益或损害合法商业利益相悖的机密信息。

第14条  
拒绝利益

根据本议定书第16条和第19条的规定，在事先通知和磋商的情况下，如果成员国确定服务是由非任何一方成员国的个人间接提供的，该成员国可以拒绝给予另一方成员国提供服务的人员本议定书的利益。

第15条  
税收

本议定书的条款不适用于任何税收措施。

第16条  
通知

1. 成员国应当向另一方提供书面通知，说明其认为可能实质性影响本议定书运作的任何拟议或实际措施。通知应当包括措施的理由。

2. 书面通知应当在措施实施前尽可能提前提供。如果无法提供事先通知，实施措施的成员国应当在措施实施后尽快向另一方成员国提供书面通知。

3. 应另一成员国的要求，关于任何实际或拟议的措施的信息和问题的答复，无论是否已事先通知，均应立即提供。

4. The provision of written advice shall be without prejudice as to whether the measure is consistent with this Protocol.

Article 17  
Inclusions in the Annex until 31 March 1989

A Member State may inscribe a service in the Annex until 31 March 1989. Before doing so, it shall provide written reasons for the proposed inscription to the other Member State and undertake consultations with a view to establishing whether any problems arising from the non-inscription of a service could be resolved by other means.

Article 18  
Exceptions

Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Member State or as a disguised restriction on trade in services, nothing in this Protocol shall preclude the adoption by either Member State of measures necessary:

- (a) to protect its essential security interests;
- (b) to protect public morals and to prevent disorder or crime;
- (c) to protect human, animal or plant life or health;
- (d) to prevent unfair, deceptive, or misleading practices;
- (e) in pursuance of obligations under international agreements; or
- (f) to secure compliance with laws and regulations relating to customs enforcement, to tax avoidance or evasion, or to foreign exchange control.

Article 19  
Consultation

1. The Member States shall, at the written request of either, promptly enter into consultations with a view to seeking an early, equitable and mutually satisfactory solution, if the Member State which requested the consultations considers that:

- (a) an obligation under this Protocol has not been, is not being, or may not be fulfilled; or
- (b) the achievement of any objective of this Protocol is being or may be frustrated.

2. For the purpose of this Protocol, consultations between the Member States shall be considered to have commenced on the day on which written notice requesting the consultations is given.

Article 20  
Review

The Member States agree to meet before 31 December 1990, and regularly thereafter, to review the operation of this Protocol.

4. 提供书面建议不应损害该措施是否符合本议定书的判断。

第17条  
附件中直至1989年3月31日的包含内容

一个成员国可直至1989年3月31日在附件中列出一项服务。在此之前，它应向另一成员国提供所提议列入的书面理由，并与对方进行磋商，以确定因一项服务未被列入而产生的问题是否可通过其他方式解决。

第18条  
例外

只要此类措施不被用作对另一成员国个人的任意或不公正歧视的手段，或用作对服务贸易的隐蔽限制，本议定书中的任何内容均不得阻止任一成员国采取必要的措施：

(a) 保护其基本安全利益； (b) 保护公共道德和防止动乱或犯罪； (c) 保护人类、动物或植物的生命或健康； (d) 防止不公平、欺诈或误导性做法； (e) 履行国际协议项下的义务；或 (f) 保障遵守与海关执法、避税或逃税、外汇管制有关的法律和法规。

第19条  
磋商

1. 成员国应根据另一方的书面请求，迅速进行磋商，以期寻求早日、公平和相互满意的解决方案，如果请求磋商的成员国认为：

- (a) 本议定书项下的义务尚未得到履行、正在被履行或可能无法得到履行；or
  - (b) 本议定书任何目标的实现正在被或可能被受阻。
2. 就本议定书而言，成员国之间的磋商应是

被认为在发出书面通知请求磋商的当天开始。

第20条  
审查

成员国同意在1990年12月31日之前会晤，此后定期审查本议定书的运作。

## Article 21

## Status of Annex

The Annex to this Protocol is an integral part of this Protocol.

## Article 22

### Association with the Protocol

1. The Member States may agree to the association of any other State with this Protocol.
2. The terms of such association shall be negotiated jointly between the Member States and the other State.

## Article 23

## Entry into force

This Protocol shall enter into force on 1 January 1989.

IN WITNESS WHEREOF the undersigned, duly authorised, have signed this Protocol.

DONE in duplicate at Canberra on the eighteenth day of August One thousand nine hundred and eighty-eight.

FOR AUSTRALIA:      FOR NEW ZEALAND:

[Signed:] B. HAWKE [Signed:] D. LANGE

## 第21条

## 附件的地位

本议定书的附件是本议定书的组成部分。

## 第22条

## 与议定书关联

1. 成员国可以同意任何其他国家与本议定书关联。
2. 此类关联的条款应由成员国与其他国家共同谈判。

## 第23条

生效

本协议定书应于1989年1月1日生效。

IN 为证明, 签字者经授权, 已签署本议定书。

一式两份，于1988年八月十八日在堪培拉签署。

为澳大利亚： 为新西兰：

[签署:]            [签署:]B·霍克

D·兰格

